

**Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements**

**Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201**

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:

Phone

FAX

Dear Sir:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Enclosure 1

FACTS

You incorporated in the State of [REDACTED] on [REDACTED] to:

Increase awareness and knowledge of autism in order to facilitate early diagnosis and the opportunity for effective early intervention.

Provide effective treatment resources to improve the "quality of life for children with autism and their families.

Develop an alliance of professionals who will provide comprehensive treatment resources for children with autism and their families.

Communicate the need for and solicit support from "faith based organizations", to provide support for families of children in autism in a spirit of faith, hope and love.

Do all and everything necessary and proper for the accomplishment of the purposes stated in these Articles of Incorporation, or attaining any of the objects or the furtherance of any of the purposes enumerated in these Articles of Incorporation or any amendment thereof, necessary or incidental to the protection and benefit of the Corporation, and in general, either alone or in association with other firms, individuals, corporations, or associations, to carry on any lawful pursuit necessary or incidental to the accomplishment of the purposes or the attainment of the objects and the furtherance of such purposes or objects to this Corporation.

Your stated purpose is to provide intensive early childhood intervention to families on a "fee for service" basis. The model that you believe to be most effective is one-on-one instruction to each for between 25 and 40 hours each week. The in-home "instructor-therapist" designs each child's program under the mentorship of a board certified behavior analyst, who examines the child's behaviors on a periodic basis and assist the "instructor/therapist" in development of a program tailored to the child's needs. A licensed psychologist meets periodically with the "instructors/therapist" to evaluate and provide overall supervision and control of the intervention. You plan to provide intervention for two families the first year, increasing to four families during your second year of operation. You will increase the provision of intensive early childhood more rapidly as more trained "instructor/therapists" become available.

You will receive the bulk of your initial funding from fees charged for early childhood intervention. These fees will generate between [REDACTED] to [REDACTED] percent of your first year's budget. You are providing these services at cost. No additional funds are available to support your other goals or to assist families who are not financially able to defray the costs.

[REDACTED]

You will engage in developing outside funding sources to meet [REDACTED] percent of your annual budget needs.

You provide autism intervention services to autistic children on a fee for service basis at the current rate of \$[REDACTED] per hour. Parents who receive intervention services also bear a percentage of the general overhead that you incur that are related to coordination of the intervention services. The inclusive rate that you currently charge is comparative to other service providers in [REDACTED] who are charging \$[REDACTED] per hour.

A copy of your service agreement revealed that you charge \$[REDACTED] per month. A fee of \$[REDACTED] shall be payable on a semi-monthly basis, no later than the first day of the month and the fifteenth day of the month in which services are to be provided. The client family agrees to pay any and all amount not reimbursed by the health care provider. The fee can be reviewed at any time if your expenses exceed the agreed cost of providing services.

The "example" sliding scale for three families indicates that unless you receive [REDACTED] percent of your operating expenses in contributions, no family would be eligible for reduced fees.

[REDACTED], the father of an autistic child is a disqualified person because he has provided substantial financial support to [REDACTED].

Income is primarily derived from fees for service and expended for salaries.

LAW

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations, which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 502 of the Internal Revenue Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be tax exempt on the grounds that all of its profits are payable to exempt organizations.

Section 513(a) of the Code defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds for the use it makes of the profits derived) to the exercise or performance by an organization of the purpose or function constituting the basis for its exemption.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as

"operated exclusively" for one or more exempt purposes only if it engages primarily in activities, which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operations of such trade or business are in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of activities, which are in furtherance of one or more exempt purposes.

Section 1.513-1(d)(2) of the Regulations provides that a trade or business is "related" to exempt purposes only where the conduct of the business activity has a causal relationship to the achievement of any exempt purpose, and is "substantially related" for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business from which a particular amount of gross income derived to be substantially related to purposes for which exemption is granted, the production or distributions of goods or the performance of the services for which the gross income is derived must contribute importantly to the accomplishment of those purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the existence of a single non-exempt purpose, if substantial in nature, would destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes.

In Christian Manner International, Inc. v. Commissioner, 71 T. C. 661 (1979), the court held that a corporation, which sold books of a religious nature at a profit, was pursuing principally a commercial purpose and was thus ineligible for tax-exempt status. A primary factor indicating such a purpose was that the corporation was in direct competition with other businesses that sold religious literature.

In Federation Pharmacy Services, Inc. v. Commissioner, 625 F.2d 804 (1980), the court denied exemption to a organization formed to sell prescription drugs to its members at a price of 5 percent below the lowest price charged for such items at local-for-profit pharmacies, as established by a price survey. Non-members would be obligated to pay the established survey price for their drug purchases. Its primary source of income was derived from its prescription drug sales. Federation planned to promote its products through advertising, principally directed at senior citizens and the handicapped. The court emphasized that the selling of prescription drugs at a discount to the elderly and the handicapped does not in itself manifest a charitable purpose. In this case the selling of prescription drugs by Federation may serve to promote health, but it does not, with more, further a charitable purpose within the scope of 501(c)(3).

In Sonora Community Hospital v. Commissioner, 46 T. C. 519 (1966), the Tax Court denied tax-exempt status to a hospital, which provided only a de minimis amount of free care. The court

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said, "a charitable hospital may impose charges or fees for services rendered, and indeed its charity record may be comparatively low depending upon all the facts... but a serious question is raised where its charitable operation is virtually inconsequential".

Revenue Ruling 68-167, published in Cumulative Bulletin 1968-1, on page 255, holds that an organization for to assist needy women in earning income qualified for exemption. The organization operates a market where it sells the cooking and needlework of these women who are not otherwise able to support themselves and their families. Although the organization charges a small commission for its services, it is not self-supporting and must depend upon public contributions.

Revenue Ruling 72-369, published in Cumulative Bulletin 1972-1, on page 245, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the operational test of the Regulations, the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code. The organization was not exempt because it was carrying on a trade or business of the type ordinarily carried on for profit.

APPLICATION OF LAW:

To qualify for exemption under section 501(c)(3), the applicant organization must show (1) that it is organized and operated exclusively for religious or charitable purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity.

While you are organized on a nonprofit basis, this alone does not mean you are automatically exempt under section 501(c)(3) of the Code. The fact that you do not make a profit is not the controlling factor. See United States v. La Societe Francaise de Bienfaisance Mutuelle, 152 F. 2d 243 (9th Cir. 1945), cert. denied 327 U.S. 793 (1946); Hassett v. Associated Hospital Service Corporation, 125 F. 2d 611 (1st Cir. 1942), cert. denied 316 U.S. 672 (1942); Baltimore Regional Joint Board Health and Welfare Fund v. Commissioner, 69 T. C. 554 (1978); and B. S. W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978).

A review of your sliding scale schedule indicates that your organization has and is targeting moderate and above moderate-income level families who have insurance and are financially able to pay for your services. In adopting this method of operation, you fees are cost prohibitive to families who are below the moderate-income level and uninsured, thereby eliminating a charitable class

Although you indicated that you would offer reduced fees to the third family you service, this is contingent upon the receipt and amount of contributions you receive. Thus if you do not receive contributions you will not provide reduced fees.

Even though your organization promotes health, your method of operation is not within the purview of 501(c)(3) of the Code. While an organization can charge fees for its service, as in Rev. Rul. 68-167, its activities must not be commercial in nature.

CONCLUSION:

We have determined that you are similar to the organizations described in the cited published precedence. Accordingly, you are similar to a commercial business and are in direct competition with other businesses, corporations and organizations within the Houston area which defeats exemption under section 501(c)(3) of the Code.

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption under section 501(c)(3) of the Internal Revenue Code of 1986.

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective ****

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date